

IN THE SUPREME COURT OF THE STATE OF ARIZONA

FILED

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NOEL K. DESSAINT  
CLERK SUPREME COURT  
BY

In the Matter of: )  
AMENDING ARIZONA CODE OF ) Administrative Order  
JUDICIAL ADMINISTRATION §7-205: ) No. 2002- 106  
DEFENSIVE DRIVING PROGRAM ) (Affecting Administrative  
                               ) Order No. 2000-84)  
                               )

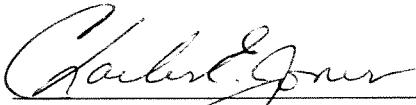
An amendment to the above captioned section of the Arizona Code of Judicial Administration having come before the Arizona Judicial Council on October 17, 2002, and having been approved and recommended for adoption,

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) §28-3395(B),

IT IS ORDERED that Arizona Code of Judicial Administration Section 7-205 is amended as indicated on the attached document. All other provisions of §7-205, as originally adopted, remain unchanged and in effect.

IT IS FURTHER ORDERED this amended section is effective upon signature, and until Arizona Code of Judicial Administration §7-201 is adopted by a subsequent administrative order, all references to Arizona Code of Judicial Administration §7-201 in Arizona Code of Judicial Administration §7-205 are to General Rule 1, Certification Program Administrative Rules, as adopted by Administrative Order No. 99-43.

Dated this 19th day of November, 2002.

  
CHARLES E. JONES  
Chief Justice

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 7: Programs of the Administrative Office of the Courts**  
**Chapter 2: Certification and Licensing**  
**Section 7-205: Defensive Driving Program**

**A. Definitions.**

“Adequate meal break” means a reasonable amount of time for a defensive driving student to travel to a suitable restaurant or similar establishment, eat and return to the location where the class is being held.

“Administrative director” means the director of the administrative office, Arizona Supreme Court, or the director’s designee.

“Affidavit of compliance” means a signed document that affirms a certificate holder understands the requirements of the Arizona Code of Judicial Administration related to the certificate holder’s function (school or instructor), is in compliance with those requirements and pledges to remain in compliance.

“Affidavit of eligibility” means a certificate on which defensive driving program participants affirm their eligibility to attend the program.

“Alternative delivery method” means a program other than a live classroom presentation by an instructor.

“Applicant” means the person, or an officer, director, partner, member, trustee or manager of an entity that is submitting a request for certification of a defensive driving school, or the person submitting a request for certification as a defensive driving instructor.

“Attend” means to begin a defensive driving course, whether at a classroom site or by receiving the materials to begin an approved alternative delivery method.

“Batch processing” means the method by which student records are transmitted to the Defensive Driving Tracking System in collections (multiple records are sent as one group).

“Business day” means any day, excluding Saturday and Sunday, not recognized by the state or federal government as an official holiday.

“Certificate holder” means any entity, or individual owner, contractor, coordinator, or officer for a defensive driving school, that is granted certification or a permit to operate a defensive driving school, or an instructor of defensive driving classes granted certification to teach for certified schools.

“Certification” means that an entity or individual has applied to, and is approved and granted an authorizing document by the Defensive Driving Program that attests the entity or individual has apparently met all tests and requirements for the granting of the certificate, may exercise the privileges of the certificate and shall comply with the requirements for certification, until expiration, revocation or suspension.

“Chief justice” means the chief justice of the Arizona Supreme Court.

“Class schedule directory” means a complete listing of a school’s classes for a specified advance period of time including instructor name, time of class, date, and location.

“Code” means the Arizona Code of Judicial Administration.

“Code section” means the referenced provision of the Arizona Code of Judicial Administration.

“Combined class” means a class that includes students from both the Defensive Driving Program and other programs, for example the Motor Vehicle Division Traffic Survival School Program.

“Complete” means (1) to begin and successfully finish a defensive driving class; or (2) the act of awarding a completion certificate as evidence a defensive driving class has been successfully completed; or, (3) the act of reporting a student’s completion to a court and the Defensive Driving Program for the purpose of diverting a violation or as an element of sentence.

“Completion certificate” means a document issued by a certified defensive driving school or the Defensive Driving Program that attests an individual has successfully completed a Defensive Driving Program class.

“Course demonstration” means a presentation of an applicant school’s complete program including all alternative delivery method options, presented to the Defensive Driving Program for the purpose of curriculum approval.

“Court diversion fee” means the amount paid by the violator pursuant to A.R.S. §28-3396 for diverting a violation, collected by the defensive driving school and disbursed to the court with jurisdiction over the traffic violation. The court diversion fee is paid in lieu of any fine, penalty, or sanction that could have been imposed if the violator had been found responsible or guilty of the offense for which the violator attends a defensive driving school.

“Court-ordered” means that an individual is directed by a judge, hearing officer or magistrate to attend and complete a defensive driving class as an element of sentence subsequent to a finding of responsible or guilty on a civil or criminal traffic case.

“Database” means the Defensive Driving Tracking System which is the information system established pursuant to A.R.S. §28-3395(B)(3).

“Decertification” means that an individual or an entity’s certification to operate a defensive driving school or present defensive driving classes is suspended or revoked.

“Defensive driving course” means an educational and behavior modification presentation designed to teach safer driving practices and attitudes used for the purpose of court diversion or as an element of a sentence.

“Defensive Driving Program” is the department and staff at the Administrative Office of the Courts (AOC), under the administrative director, that is responsible for carrying out the statutory requirements of A.R.S. §28-3395.

“Defensive driving school” means an entity that provides an educational course designed to teach safe driving practices and attitudes that is offered for the purposes of court diversion or as an element of sentence for persons who receive eligible traffic citations as defined by A.R.S. §28-3392(A)(1) or (A)(2).

“Defensive Driving Tracking System” means the database, instituted pursuant to A.R.S. §28-3395(B)(3) for the purpose of recording all individual completions of defensive driving courses for court diversion programs and court orders on or after July 1, 1990.

“Designated contact” means the school owner, officer or staff person assigned or selected to represent a defensive driving school in matters dealing with the Defensive Driving Program and the AOC.

“Diversion” means to allow a person cited for certain designated minor moving traffic violations to complete a defensive driving course to have a violation dismissed prior to adjudication without the necessity of contact with the court or court personnel or using court services.

“Eligible civil traffic moving violation” means a violation included by A.R.S. §28-3392(A)(1) or (A)(2), where statute does not designate the offense as a misdemeanor nor a felony, the Motor Vehicle Division assigns points to the offense, and where the violation is not issued as the result of a collision that caused death or serious physical injury.

“In-service update training” means class sessions presented on topics relevant to defensive driving classes or their presentation, that total at least six hours, and are presented or approved by the Defensive Driving Program for the purpose of improving the instructors’ knowledge of defensive driving topics, methods of teaching, or other relevant topics.

“Instructional time” means the time spent presenting the school's approved curriculum. Instructional time does not include breaks, meals, registration, audio visual set-up, or time devoted to other administrative functions. Instructional time includes time a student spends viewing the Defensive Driving Program-provided video for special needs and completing the accompanying workbook, or an approved alternative delivery format subject to the same exclusions as above.

“Instructor” means a person who is certified by the Defensive Driving Program, to conduct defensive driving courses for a certified school, or in the case of alternative delivery methods where an instructor is not present, who serves as the school’s point of contact to answer student questions by telephone or electronic means.

“Level one certificate” means the certification document issued to an instructor applicant allowing that individual to teach defensive driving classes while completing initial training and while accumulating the experience required to convert to level two certification as a defensive driving instructor.

“Level two certificate” means the document issued to an instructor who has completed the first set of required continuing education classes consisting of at least six hours and has taught at least six defensive driving classes.

“Level three certificate” means the document issued to an instructor who has completed the first two levels of continuing education classes consisting of at least twelve hours and has taught at least twelve defensive driving classes.

“Level four certificate” means the document issued to an instructor who has completed the entire sequence of Defensive Driving Program training classes consisting of at least eighteen training hours and has taught at least eighteen defensive driving classes.

“Multi-purpose agency” means an entity which conducts other traffic related classes or conducts other activities, services or sales, in addition to and apart from its court diversion business.

“Negative state fee report” means a standard form (created by the Defensive Driving Program) that is submitted in lieu of payment of state fees and completion reports when no students completed a school’s defensive driving course during a reporting period and therefore, no state fees are due.

“On-line” means that a defensive driving school submits student records to the Defensive Driving Tracking System through direct access, one record at a time.

“Pre-service instructor seminar” means the course of study, formal or informal, by which a school prepares an instructor-trainee to present that school’s certified curriculum and complete any required administrative functions.

“Primary provider” means a certified defensive driving school which has entered into a contract with a court or courts to provide defensive driving courses for court diversion and its related activities.

“Probation” means a disciplinary action taken against a Defensive Driving Program certificate holder that allows the certificate holder to exercise the privileges of the certificate, subject to any restrictions imposed

by the administrative director, while taking remedial action to correct the deficiencies identified by the AOC or through a disciplinary action brought under Code Section 7-201: General Requirements.

“Program manager” means the person named by the administrative director to oversee the Defensive Driving Program. Program manager is interchangeable with the term “program coordinator” used in Code Section 7-201: General Requirements.

“Provisional certificate” means a permit to present defensive driving classes issued to a chief instructor or school officer or staff person, where currency and training requirements are waived, when the individual has accumulated level four experience as a defensive driving instructor but does not intend to regularly present classes except as an emergency replacement for certified instructors.

“Remedial course” means a class intended to correct repeat traffic offenders or required by the Motor Vehicle Division after an individual is convicted of a serious offense, for example reckless driving, or alcohol or drug related offenses. The Defensive Driving Program does not provide remedial courses.

“Remittance report” means an explanatory report detailing individual student attendance, payments a court or the AOC receives, and any adjustments, that accompanies the disbursement check for court diversion or state fees.

“Revocation” means a Defensive Driving Program certification is permanently invalidated or canceled.

“Rules of court” means the *Arizona Rules of Court*.

“School advisory committee” means the group consisting of representatives from each certified defensive driving school which meets to consider issues and advise the Defensive Driving Program on matters concerning the creation and implementation of legislation or rules affecting the Defensive Driving Program.

“School database information” means the school information directory for defensive driving schools maintained for school and Defensive Driving Program use on the Defensive Driving Tracking System.

“School fee” means the amount charged to each student by a certified defensive driving school for attending a defensive driving course that is retained by the school for its services.

“Serious physical injury” means the same as provided by A.R.S. §13-105(34), that is: “Serious physical injury includes physical injury which creates a reasonable risk of death, or which causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.”

“State fee” means the amount mandated by A.R.S. §28-3397(A) and the amount mandated pursuant to A.R.S. §12-114(A) that are collected by each defensive driving school from each individual who begins

a defensive driving course for diversion, or on the order of a court, that are remitted to the supreme court and accrue to the Defensive Driving School Fund and to the Judicial Collection Enhancement Fund respectively.

“State fiscal year” means the state business year set from July 1 to June 30. Defensive Driving Program budgets, activities, certification cycles and records are all generally based on fiscal year.

“Suspension” means a Defensive Driving Program certificate is not revoked, but the certificate holder is not permitted to exercise the privileges of the certificate for a set period of time as the result of a disciplinary action by the administrative director.

“Valid” means currently in effect, issued and signed by authorized staff of the Defensive Driving Program and not suspended or revoked.

## **B. Applicability.**

1. This code section applies to the certification of defensive driving schools and administration of the Defensive Driving Program pursuant to A.R.S. §§28-3391 through 3399.
2. Code Section §7-205: Defensive Driving Program, is read in conjunction with Code Section §7-201: General Requirements.
3. A defensive driving school shall obtain certification from the Defensive Driving Program before offering defensive driving diversion classes or services to any Arizona court or citizen, and shall comply with the requirements of this code section, and the requirements of Code Section §7-201: General Requirements.
4. This code section does not apply to educational providers established pursuant to other statutes mandating or governing educational programs administered by other agencies except where these providers also maintain certification as defensive driving schools.
5. Each school seeking initial certification or annual renewal shall meet and continually comply with these requirements. Failure to comply with these requirements following certification may result in the school being placed on probationary status, suspension of certification, revocation of certification, or refusal to renew certification, at the discretion of the administrative director.
6. Waiver of Requirements. The administrative director may waive time limits or schedules contained in this code section if the chief justice agrees.

- C. Purpose.** The purpose of this code section is to provide rules and procedures for administration of the Defensive Driving Program including supervision of the use of the program by courts, certification

and monitoring of schools and instructors, and requirements relating to the implementation, operation and maintenance of the Defensive Driving Tracking System.

**D. Administration.**

1. Authority of the Administrative Director. The administrative director has authority for administration of the Defensive Driving Program, Defensive Driving School Fund, and the certification and monitoring process for defensive driving schools and instructors that serve as court authorized diversion programs. The administrative director is authorized to establish policies, procedures, forms and reports necessary to administer the program.
  - a. In accordance with A.R.S. §28-3395(B), the supreme court shall:
    - (1) Supervise the use of defensive driving schools by the courts in this state;
    - (2) Make public the amount of the court diversion fee assessed by each court in this state pursuant to this article [A.R.S. §28-3396] and the total cost to attend a defensive driving school in each court;
    - (3) Establish an automated statewide data base for keeping a record of persons who attend a defensive driving school;
    - (4) Adopt rules that establish criteria for the certification of qualified defensive driving schools and instructors used by the courts;
    - (5) Establish procedures for courts and schools to remit reports that are required by the Defensive Driving Program; and
    - (6) Certify and monitor defensive driving schools and instructors that serve as a court authorized diversion.
  - b. In addition to the duties specified by Code Section 7-201: General Requirements, the administrative director shall:
    - (1) Prepare fiscal projections and create a budget based on those projections for the purpose of administering the Defensive Driving Program;
    - (2) Allocate and expend funds for administrative costs associated with the Defensive Driving Program and expend funds to further expedite the processing of all offenses in compliance with A.R.S. §28-3398(B);
    - (3) Contract when necessary for professional services to maintain the Defensive Driving Tracking System for assistance in certifying and monitoring defensive driving schools and instructors, or other necessary services pursuant to A.R.S. §28-3395(A);
    - (4) Appoint advisory groups and committees as necessary to facilitate implementation and administration of the Defensive Driving Program;
    - (5) Set a defensive driving program fee pursuant to A.R.S. §28-3397(A); the administrative director may review and adjust the fee amount within the set limits;

- (6) Collect and transfer the Judicial Collection Enhancement Fund surcharge pursuant to A.R.S. §12-114, for each person who attends a defensive driving school pursuant to a court diversion program or as part of a sentence imposed by a court;
  - (7) Set and collect certification and renewal fees from each applicant; and
  - (8) The administrative director may require that a primary provider or other Defensive Driving Program-related contract between a court and a defensive driving school or schools include specific provisions.
2. Authority of the Program Manager. The administrative director may designate a Defensive Driving Program manager. If designated, the program manager:
- a. Shall administer the Defensive Driving Program in compliance with statute, rules of court, administrative orders and the administrative code, under the guidance of the administrative director;
  - b. Shall maintain a list of certified defensive driving schools for distribution to courts and the public. The program manager may charge the costs of copies of the certification list (or any other public records of the program) to the requesting party in accordance with Rule 123, Rules of the Supreme Court of Arizona, and this code;
  - c. May perform periodic performance reviews of school administrative operations to ensure compliance with applicable requirements, policies, procedures and statutes. Following these reviews, the program manager shall prepare a report of the review findings which shall include each point of compliance or non-compliance;
  - d. May require periodic financial audits of defensive driving schools;
  - e. Shall implement a monitoring program and shall monitor each defensive driving instructor at least once every two years, or more often as necessary to ensure compliance with program requirements. The program manager shall determine the frequency of monitoring by considering instructor experience level, school size, number of classes held, frequency of problems encountered with all instructors or other factors;
  - f. Shall collect all certification fees in advance. Certification fees are non-refundable. Schools shall pay certification fees by money order or certified check, unless the program manager waives this requirement. The program manager may waive receipt by certified check or money order if a school that is certified for more than twelve months has not had any checks returned for non-sufficient funds, and has not had any instances of late payment. The supreme court shall deposit the fees in accordance with A.R.S. §28-3397(C); and
  - g. Shall maintain a schedule of certification and renewal fees as set by the administrative director.

3. Schools.

- a. A defensive driving school shall not sell, transfer or assign its certification to any other entity.
- b. A defensive driving school may contract with a certified or non-certified third party for partial and specifically defined operations such as data entry, on-site testing, and program distribution. The school shall disclose any third-party operations as part of the certification application or subsequent amendments. The program manager shall review and approve the plan to determine if the operations proposed constitute a violation of defensive driving program rules or policies adopted by the director. This section applies to operations that involve the direct delivery of defensive driving services to the public, or where the contractor is performing elements of the required duties normally performed by the certified school. Incidental operations such as telephone service or internet service are not subject to the requirements of this section.
- c. Each certified school is responsible for all operational aspects including any elements or functions performed by contractors. Actions by non-certified third-party contractors constituting violations of this code or any other defensive driving program policy or rule are the responsibility of the certified school. The certified school is subject to disciplinary action as provided in these rules for any violations by contractors, when considered appropriate by the administrative director.
- d. Each school shall maintain a business office and local telephone number in the state of Arizona through which the school's Arizona business is transacted. The Arizona office shall maintain and keep copies of all operational records including all Arizona student records required by this code section.
- e. Each school shall notify the program manager of any change in the telephone number, business address, mailing address or home address of principals, officers and owners of the defensive driving school or any other required database information within three business days of the change.
- f. Each school shall designate a contact within the state of Arizona who holds contracting authority for the school, with whom Defensive Driving Program staff can immediately communicate concerning program operation.
- g. Each school shall comply with all applicable federal, state and local laws and regulations.
- h. Each school, if a corporation, shall maintain "good standing" as defined by the Arizona Corporation Commission and shall submit a certificate of good standing issued by the Arizona Corporation Commission on request.

- i. Each school shall fully disclose all current paid or unpaid officers, directors, owners and board of directors.
- j. Each school shall have valid federal and state tax identification numbers, as required by state or federal law.
- k. Each school shall remain current on informational filings with the state of Arizona as required.
- l. Each school shall remain current on workman's compensation and unemployment insurance as required by law.
- m. Each school shall purchase and maintain commercial general liability insurance including incidental malpractice with a minimum combined single limit of \$1,000,000 per occurrence.
  - (1) Each policy shall name the state of Arizona, the supreme court and, if applicable, each court with which the school has primary provider contracts, as additional insured parties.
  - (2) Schools shall purchase coverage in forms approved by the administrative director. Insurers shall be licensed to do business in the state of Arizona, with minimum ratings as specified by the Arizona Department of Administration. The administrative director may disapprove the use of specific insurers.
  - (3) Defensive driving schools that are part of a self-insured governmental entity shall submit documentation from the governmental entity stating the school's coverage.
  - (4) The administrative director may require a bond to guarantee payment of diversion and state fees.
- n. Each school shall allow only supreme court certified instructors to present defensive driving classes, except that an instructor-in-training may present a class or portions of a class under the direct and present supervision of a certified instructor.
- o. Each school shall use only the curriculum and materials approved by the Defensive Driving Program in presenting defensive driving classes. The curriculum includes a detailed written outline of the course or lesson plan, films or audio visual materials, and any written materials the school intends to use to supplement the presentation.
- p. Each school shall establish and follow detailed written operational and financial procedures. If the defensive driving school is a multipurpose agency, it shall establish separate records and procedures for the reporting of revenue receipts, disbursement of funds, and any other financial transactions for the defensive driving school portion of the agency.

- q. Each school's procedures and records shall conform to generally accepted accounting principles and the minimum accounting standards contained in this code section.
- r. Each school shall collect the court diversion fee, the fee established by the administrative director for the defensive driving school fund, the Judicial Collection Enhancement Fund fee, plus any fee charged by the school before an individual begins a defensive driving school class.
- s. A school shall not issue a completion certificate to any student who has not paid all required fees.
- t. Each school shall collect and remit all diversion fees to each court as required by A.R.S. §28-3396(C) and according to this code section, with all required reports and data concerning the student and traffic ticket for which the fees are collected. The school shall hold the diversion fees in trust for the courts until disbursed.
- u. Each school shall collect and remit all state fees and the required reports concerning the student and traffic ticket for which the fees were collected, or a "negative state fee report" if no state fees were collected. The school shall hold the state fees in trust for the supreme court until disbursed.
- v. Each school shall submit the school's schedule of future classes in the manner and within the time required by the program manager. The schedule shall include the date, start and end time, instructor name, and location of each class. The school shall submit the schedule as often as necessary to ensure the Defensive Driving Program has accurate and current information.
- w. Each school certified to provide an alternative delivery method (ADM) shall provide a list of sites where the program is made available and disclose the process by which the course is administered. The ADM school shall provide the schedule of on-duty instructors, on the schedule required by the program manager. The school shall provide the schedule in a Defensive Driving Program-specified electronic or other format, and update it as often as necessary to ensure it is accurate.
- x. Each school shall maintain the confidentiality of all defensive driving student records. Schools shall not disclose Defensive Driving Tracking System information to any third party. Schools may disclose information to individuals only upon presentation of reasonable evidence the person seeking the information is the same person who is the subject of the record. Schools shall refuse or refer all third party requests for student information to the Defensive Driving Program.

- y. A school shall not perform nor permit its employees or representatives to perform judicial functions or functions for court staff. School personnel shall not volunteer assistance to court staff in their official duties.
4. Eligibility, Registration and Attendance.
- a. Each school shall ensure the violation for which a student attends a defensive driving class is an eligible moving violation as specified by A.R.S. §28-3392(A) and defined by this code section, is permitted by the court for diversion if an eligible misdemeanor, and that the violation did not result from a collision that caused the death or serious physical injury of any person as defined in this code section.
  - b. Each school shall determine whether an individual is eligible to attend defensive driving school before the individual is allowed to attend a class for diversion of a traffic violation through a query of the Defensive Driving Tracking System. A school may also use the Defensive Driving Tracking System to investigate the eligibility of any other attendee or prospective attendee, for example, in instances where a person is court-ordered to attend a defensive driving class.
  - c. Each school shall notify the Defensive Driving Program and the court of jurisdiction of any student who completes a class but was not eligible for diversion, and shall include in the notification the reasons the school failed to prevent the attendance. This requirement does not apply to students who are court-ordered pursuant to statute, when the court order is issued prior to the class attendance.
  - d. Each school shall report general student and payment information and course completion data either directly to the Defensive Driving Tracking System on-line or on a batch basis. The program manager shall determine whether the school is to operate on a batch or on-line basis based on the needs of the court and the school.
  - e. Each school shall require each student to show official identification prior to beginning a class. Acceptable forms of identification are limited to an official government-issued driver license or an official state or federal photo identification card.
  - f. Each school shall physically verify the registration information collected against the driver license or identification card and the citation to ensure accuracy of required information
  - g. Each school shall make a positive identification of each attending person through direct comparison of the person to the person's valid driver license or official state identification card. The program manager may require a school to retain a photo copy of each driver license.

- h. Each school shall collect and retain a copy of each attendee's citation upon registration to permit verification of data and eligibility and shall furnish the citation on request to the Defensive Driving Program.
  - i. If the school is conducting a defensive driving class by an approved alternative format where classroom attendance is not required, a school representative shall make a positive identification of the participant at the time of delivery of the course materials to the student. The procedures for administration of the course shall demonstrate the person registered for the course is the actual participant during the time the class is taken and completed.
  - j. Each school shall require students who are court-ordered to attend a defensive driving class to provide the court order requiring attendance at the time of class attendance. The school shall retain a copy of each court order.
  - k. Each school shall require individuals to read and sign an affidavit of eligibility prior to beginning a defensive driving class for dismissal of a traffic citation and shall provide an explanation to students of the provisions and implications of the affidavit of eligibility. A school shall not issue a completion certificate to any student who has not signed this affidavit. The Defensive Driving Program reserves the right to approve or provide the specific wording for use on each affidavit of eligibility.
- l. Each school shall provide students who complete a defensive driving class with a completion certificate that includes the name of the student, date of the class, citation or docket number to be dismissed, court of jurisdiction, name of the defensive driving school and the school's authorized signature. The school shall complete all required information on each certificate prior to delivery to the student.
- m. Schools shall not operate in a manner that would reflect adversely on the judiciary, the courts or other agencies involved in the administration of justice, including law enforcement agencies.
- n. Schools shall not use materials or employ methods determined unsuitable by the Defensive Driving Program nor any methods or materials not specifically approved by the program manager.

5. Out-of-State Courses.

- a. Schools shall coordinate the defensive driving attendance and completion of eligible individuals who receive an eligible Arizona violation and are authorized by a court to attend an out-of-state program. Coordination shall include:
  - (1) Verification of the individual's eligibility prior to attendance;

- (2) Collection and retention of all student data and a notarized affidavit of eligibility;
  - (3) Collection and disbursal of court diversion fees and state fees as required by this code section;
  - (4) Reporting of required data to the Defensive Driving Tracking System for out-of-state students who complete a defensive driving course;
  - (5) Notification to the jurisdictional court of the individual's completion and any other reports required by that court in connection with a student attendance; and
  - (6) Providing out-of-state students with information regarding their responsibilities regarding Defensive Driving Program attendance requirements.
- b. Students shall provide satisfactory evidence of course completion within the time allowed by the Arizona court, and shall comply with all applicable requirements and policies of the Defensive Driving Program.
- c. The completion date for an out-of-state attendee is the date a valid completion certificate and all required fees are received by a certified defensive driving school, in cases where an out-of-state student is required to mail paperwork to an in-state certified school.
- d. Schools shall require and retain reasonable evidence the person taking an out-of-state course is the same person named on the Arizona citation, through a positive check of the person's driver license at the time of class or the delivery of materials for an ADM, and a notarization by jurat of the required documents.
6. Accounting System. Each school shall comply with the following requirements:
- a. Schools shall establish an accounting system that ensures accurate reporting of all transactions relative to the receipt and transmission of court diversion and state fees and provides sufficient documentation for audit or review purposes;
  - b. Schools shall separate school monies from any monies owed to any courts. Schools shall maintain a separate checking account for court diversion and state fees which they shall use for the sole purpose of holding and disbursing court diversion and state fees;
  - c. Schools shall enter all required completion information on the Defensive Driving Tracking System no later than three business days after the date of each class for each individual who completed a class;
  - d. Schools shall enter a state fee record on the Defensive Driving Tracking System for any student who pays for a class but does not complete within that payment period. Schools shall enter state fee records for any uncompleted students no later than seven days after the end of the

- payment period in which the fees were collected, and the school shall disburse all state fees so collected to the supreme court by the same date;
- e. Schools shall not enter student completion records in advance, nor enter a student record for any student who has not actually completed an approved class;
  - f. Schools shall retain all records related to a person's attendance or otherwise required by this code section a minimum of three years. Each student record shall include the following information:
    - (1) Receipt number;
    - (2) Student's complete name, address, date of birth, and license number;
    - (3) Citation information, including the number, charge number, court code, violation code and violation date;
    - (4) Receipt date;
    - (5) Amount received;
    - (6) Method of payment;
    - (7) Identification of person accepting payment;
    - (8) Date and location of class assignment;
    - (9) Date student completed class;
    - (10) Program code;
    - (11) Violation type;
    - (12) Location of class (in state/out of state);
    - (13) Copies of any applicable court order and other information significant to the record; and
    - (14) Type of class, if not a standard classroom course.
  - g. Schools shall establish a cash receipts procedure;
  - h. Schools shall use pre-printed, consecutively numbered receipts or receipts consecutively numbered by an automated system and issued to all students from whom a defensive driving fee is collected. Receipts shall provide the following information:
    - (1) Student's name;
    - (2) Receipt date;
    - (3) Amount received;
    - (4) Name of the person making the payment;
    - (5) Identification of person receiving the payment;
    - (6) Method of payment;
    - (7) Sequential receipt number; and
    - (8) Name of school.

- i. Schools shall deposit all court diversion and state fees collected into a separate checking account established for this purpose and hold the fees until the time they are disbursed;
- j. Schools shall update state fee records with completion information within three business days of the date the student successfully completes a defensive driving course;
- k. Schools shall maintain a cumulative record of all individuals who have prepaid for a defensive driving course but have not attended. Schools shall handle all prepaid fees in accordance with this code section and hold them in trust for the courts until disbursal on the prescribed schedule or until an approved refund is issued to the student pursuant to this code section;
- l. Schools shall establish procedures that result in timely disbursement of all court diversion and state fees, according to the following requirements:
  - (1) Schools shall disburse all fees received between the 1st through the 15th of the month to the courts by the 22nd day of that month;
  - (2) Schools shall disburse all fees received from the 16th through the 31st of the month to the courts by the 7th day of the following month; or
  - (3) Schools shall disburse fees more often if required by the terms of a court contract.
- m. Schools shall replace any checks disbursed to a court which are returned by the bank for insufficient funds within three business days and shall add all returned check charges incurred by the payee to the replacement check. The Defensive Driving Program may take disciplinary action against a school that issues an insufficient funds check;
- n. Schools shall prepare a monthly bank reconciliation for the court diversion and state fee checking account;
- o. Schools shall reconcile receipts to deposits. The aggregate receipts for the month shall match the aggregate deposits;
- p. Schools shall reconcile the month-end court diversion and state fee checking account balance to the unpaid amounts owed to the courts. Schools shall account for the balance in the account at all times;
- q. Schools shall reconcile and balance all collected fees on a daily basis;
- r. Schools shall provide remittance reports with each payment made to a court which shall contain the following information:

- (1) Complete name;
    - (2) Birth date;
    - (3) Driver license number;
    - (4) Citation number;
    - (5) Court; and
    - (6) Date of course completion, if applicable.
  - s. Schools shall format remittance reports for the courts in the manner agreed upon between the court and the school;
  - t. Schools shall submit remittance reports for the Defensive Driving Program in the following format:
    - (1) List of individuals who completed the defensive driving course and the court diversion or state fee remitted for that period;
    - (2) List of individuals who registered for a course but did not complete it and the court diversion or state fee remitted for that period;
    - (3) List of individuals who completed the defensive driving course and the court diversion and state fee paid in a prior period; or
    - (4) If no payment is due to the supreme court, the school shall prepare and submit a negative state fee report.
  - u. Schools shall prepare and send a court payment report to the Defensive Driving Program with the state fees and remittance report. This report shall include:
    - (1) Name of each court to which a payment is made;
    - (2) Payment date;
    - (3) Amount of the payment; and
    - (4) Check number; or
    - (5) Schools may submit copies of checks or receipts instead of the court payment report.
  - v. Schools shall transmit reports to the Defensive Driving Program electronically, on a diskette, or manually, using a consistent method. The school shall submit requested changes to reporting method or format to the program manager for prior approval.
7. State Fees.
- a. Schools shall provide detailed records on students for whom state fees are due. It is not acceptable for a school to provide only aggregate numbers.

- b. Schools shall ensure a state fee is remitted for each student whose name appears on the remittance report.
- 8. Remittance Reports.
  - a. Schools shall deliver electronic remittance reports (if used or requested) to the Defensive Driving Program on or before the payment due date. If a diskette is used, schools shall mail the diskette and a hard copy of the data with the remittance report to the Defensive Driving Program. Schools shall retain electronic or diskette reports in an accessible format until the school receives confirmation from the Defensive Driving Program the information is usable, complete, accurate, and is reconciled.
  - b. Schools shall remit manually prepared remittance reports (if used or requested) in accordance with this code section and deliver the reports to the Defensive Driving Program in the required format, on or before the payment due date.
- 9. Refunds.
  - a. Once a person begins a class, the state fee is non-refundable except as specifically provided by this subsection. Schools may refund other registration fees in accordance with their own guidelines, or at the direction of a court.
  - b. Refunds by the school of court diversion and state fees are permitted when all fees paid (school fee, diversion fee and state fee) are refunded, and
    - (1) A student pre-pays for a class, does not begin the class and does not contact the school to reschedule for a future class. The school shall refund both the court diversion fee and the state fee 60 days after the scheduled class date or upon notification from the student that the student will not attend a class, whichever is first, or
    - (2) An officer fails to file a citation with a court and the cited person attends a diversion course for that citation. Upon notification by the jurisdictional court, the school shall notify the program manager a refund is requested. Upon written approval by the program manager, the school shall refund the state fee to the student.
  - c. The program manager may authorize refund of a state fee, when a citation is dismissed by a jurisdictional court on its own motion, for technical problems that are not correctable under civil traffic rules (rules of court).
  - d. Refund of student fees shall result in restoration of the student's eligibility for the program.

- e. Refunds of state fees to schools or students are not permitted for ineligible violations or ineligible students who attend a defensive driving class, whether by fault of the student or school.
- f. At its discretion, a court may direct refund of a court diversion fee to a student, or may direct the school to forward the fee to the court for a bond or other amount due the court, up to the amount of the default for the citation.
- g. Schools shall maintain complete and accurate records of all refunds. The school shall attach supporting documentation to each refund disbursement.
- h. In cases where refunds cannot be authorized under this code section, the program manager may authorize restoration of eligibility for a student who attends a defensive driving class but cannot have the violation dismissed because the violation was ineligible for diversion. An ineligible violation is any violation not included by A.R.S. §28-3392(A).

10. Outstanding Disbursements.

- a. Schools shall investigate on a monthly basis all disbursement checks outstanding for more than six months.
  - (1) If the payee is a court, the school shall reissue the check if necessary and cancel the missing check.
  - (2) If the payee is a student to whom a refund is owed, the school shall send a letter to the payee's last known address advising the payee the check has not been cashed.
  - (3) If the student responds the check is lost, the school shall reissue the check and cancel the outstanding check.
  - (4) If the student does not respond within 30 days or cannot be located, the school shall reissue the check to the supreme court. The supreme court shall process the unclaimed refund according to state law.
- b. Batch schools shall correct errors to state fee and completion records or submit a request for correction to the Defensive Driving Program within five business days of receiving notice from the system of the error or five business days after discovery.
- c. On-line schools shall correct or request correction of state fee or completion records within five days of system notice or discovery.

11. Defensive Driving Tracking System. The supreme court shall maintain a database, "the Defensive Driving Tracking System," as required by A.R.S. §28-3395(B)(3) to keep records of all persons who have attended a defensive driving school. The Defensive Driving Tracking System includes

the student database and associated electronic mail, instructor tracking and class schedule directory features. The program manager may establish system specifications for each school. Additionally, each school shall comply with the following requirements:

- a. Schools shall provide one or more persons to attend system operation training prior to certification and as often thereafter as the program manager requires for system updates and as often as necessary to maintain the institutional knowledge required to operate the Defensive Driving Tracking System correctly and accurately;
- b. Schools shall provide and maintain the proper hardware and software to interface with the system, and update these as often as required by the Defensive Driving Program to maintain efficient system function;
- c. Schools shall ensure the required data for state fees and class completion is entered and errors corrected, or an error correction requested within the time frames specified in this code section;
- d. Schools shall maintain class schedule directories as required by the program manager on the same physical computer system that contains the Defensive Driving Tracking System, unless an exception is authorized by the program manager;
- e. Schools shall comply with all the requirements of this code section on behalf of students who attend an out-of-state defensive driving class, except that the completion date of an out-of-state student is the date the completion certificate and required fees and documentation are received by the coordinating Arizona defensive driving school;
- f. Schools shall assume responsibility for all costs of equipment, telephone lines, contractor fees incurred to meet these requirements, and any upgrades required to maintain the system in a reasonable condition as determined by the Defensive Driving Program; and
- g. Schools shall maintain the ability for connection to the Defensive Driving Tracking System continuously. The Defensive Driving Program may suspend the certificate of a school upon failure to maintain the ability to connect to the Defensive Driving Tracking System for more than three consecutive business days, and may revoke certification if connection and serviceability are not restored within 30 days.

## 12. Educational Requirements.

- a. Schools shall prepare and submit an accurate and detailed written course description. The Defensive Driving Program shall review and approve or reject the submitted written course

description before use. The course description shall detail an Arizona-specific educational and behavioral modification lesson plan that includes:

- (1) The concept of collision prevention, including a discussion of the magnitude of traffic collision problems;
  - (2) Practical defensive driving techniques;
  - (3) Use and importance of safety systems including seat belts, child restraints, "Anti-lock Braking Systems," and supplemental restraint systems;
  - (4) The role of alcohol and drug use in increasing risks and the probability of collisions;
  - (5) The risks involved in irresponsible driver behaviors including inattention, speeding, reckless driving, failing to observe school zones and crossings, and running red lights and stop signs;
  - (6) A review of the major traffic laws of Arizona and local ordinances; and
  - (7) (Optional) coverage of other local traffic issues and driving conditions.
- b. Schools shall conduct defensive driving classes to ensure each student receives a minimum of 330 minutes of instructional time. If a school presents a class that is less than 330 minutes of instructional time for every student attending, that class does not meet standards. Failure to meet time requirements is cause for disciplinary action by the Defensive Driving Program.
  - c. Schools and instructors shall present only that material contained in the school's certified curriculum and pre-approved by the Defensive Driving Program.
  - d. Schools or instructors shall not use a defensive driving class as a forum for any purpose except the presentation of the approved lesson plan.
  - e. Schools shall schedule an adequate meal break if the entire class is given in one day, or one evening, unless students are notified at least 24 hours prior to class no meal break will be allowed and that students are permitted to consume food and beverages during the class instruction time. This requirement is subject to modification for compliance with the Americans with Disabilities Act (ADA), and is not applicable to ADM formats where the student controls the timing of completion of the material.
  - f. The instructor shall remain in the classroom with the students during the full 330 minutes of instruction time. This provision does not apply to situations where the video program for special needs is used, or an ADM format, but in these cases, schools shall ensure a supreme court-certified instructor is directly available at all times to answer student questions.
  - g. Schools shall limit attendance to only that number commensurate with student comfort in the classroom including adequate classroom space and seating capacity for all students registered for the class, adequate heating and cooling, and immediate access to drinking water and

restroom facilities. In no case shall the number of students exceed 60 attendees per class, unless prior written authorization is obtained from the program manager.

13. Classroom and Conduct Requirements.

- a. Schools shall ensure all classrooms meet all local, county and state health, safety and building requirements and ordinances.
- b. Schools shall provide classrooms that have adequate audio-visual equipment which allows all students to see and hear the presentation clearly, if audio-visual presentations are a part of the approved lesson plan. Classroom courses are limited to a maximum of 30 percent audio-visual material.
- c. Schools shall maintain appropriate decorum in the classroom for learning.
- d. Schools shall require students to be punctual and attentive.
- e. Schools shall prohibit students from sleeping or engaging in activities that are not a part of the school's approved course during the 330 minutes of classroom instruction.
- f. Schools shall prevent or control disruptions.
- g. Schools shall expel students from the class who do not comply with the classroom standards and the reasonable instructions of the school's staff. When a school expels a student from a class, the school shall make and retain a report explaining the circumstances and reasons for expulsion.
- h. Instructors shall maintain a professional demeanor while presenting defensive driving classes in accordance with the goal of the Defensive Driving Program to educate drivers and enhance traffic safety.
- i. Schools shall ask students to complete an evaluation form and shall collect and forward the completed evaluations to the program manager within five days on request. The program manager may specify the format and content of the evaluation form.
- j. Schools utilizing ADM formats shall require and obtain class evaluations from all students when requested to do so, and shall forward evaluations to the program manager within five days. The program manager may specify the format and content of the evaluation form.

14. Curriculum.

- a. Schools shall submit proposed changes to any element of the school's currently approved classroom presentation or materials, or any additions to the school's program that constitute a fundamental change in class format or delivery, to the Defensive Driving Program for approval prior to presentation to students.
- b. The program manager may require a school to make changes to curricula or other presentation materials at any time, when in the opinion of the program manager the changes are necessary to maintain the quality of the program.
- c. Schools shall not combine a defensive driving course for diversion of individuals who are cited for a civil traffic moving violation with a remedial course for individuals who are attending to avoid or mitigate a drivers license suspension. The program manager may waive this prohibition in limited market areas where it would have the effect of prohibiting use of a defensive driving course for diversion purposes as provided by A.R.S. §§28-3391 to 3399. A school may apply in writing to the program manager for written authorization to provide combined classes in specific locations. The program manager may approve the request based on the following criteria:
  - (1) Class sizes are frequently less than twenty students, indicating a limited number of students in the area; and
  - (2) No other defensive driving school is conducting non-combined defensive driving classes in the area.

## 15. Americans with Disabilities Act.

- a. Schools shall comply with the Americans with Disabilities Act (ADA).
- b. Schools may use the video program for special needs and the accompanying workbook to accommodate a person qualifying under the ADA, subject to the following provisions:
  - (1) Schools shall present the video program for special needs under the direct and immediate supervision of school staff, preferably within the context of a scheduled regular defensive driving class;
  - (2) Schools shall ensure a certified instructor is available during class time to answer any student questions;
  - (3) Schools shall not release the video program for special needs to the custody of any person or organization not affiliated with the Defensive Driving Program or a certified school; and
  - (4) A school or instructor shall use the video for special needs only for student attendances under the ADA.

- c. This subsection does not preclude a school from developing its own program to facilitate compliance with the Americans with Disabilities Act, subject to the certification requirements of this code section. The program manager may authorize other ADM's as a standard or case by case accommodation for compliance with the Americans with Disabilities Act if these methods comply with all applicable requirements of this code section.
- d. The student or class qualifying under the ADA shall meet all applicable requirements of this code section.

16. Alternative Delivery Methods.

- a. Upon request by a school or applicant, the Defensive Driving Program may approve an ADM format provided all requirements of this code section are met.
- b. The school shall ensure a certified instructor is directly available to answer student questions and schools shall have enough certified instructors, and the manner of their availability shall be adequate to ensure coverage at all times.

17. Assumed Business Name. Reference Code Section 7-201: General Requirements.

18. Instructors.

- a. Level one instructors may not act as training instructors for the certification of other instructors, except when specifically authorized by the program manager in the case of an applicant or newly certified school where the training instructor has received level one certification as part of the school application process.
- b. The administrative director may refuse to certify, or suspend, revoke, or place on probation, the certificate of any instructor who fails on two or more successive evaluations, completed more than 30 days apart, to demonstrate material accuracy or otherwise fails to meet program requirements or standards.
- c. The administrative director may set special terms for certification of instructors with a record of deficiencies on monitoring reports, including a requirement for additional training.
- d. The program manager may divulge information to a defensive driving school about an instructor obtained through certification applications, complaint investigations or routine monitoring, when the information has pertinence to a certification application filed on behalf of the instructor by a defensive driving school or if otherwise in the interest of the Defensive Driving Program.

- e. Instructors shall comply with the requirements and provisions of Code Section 7-201: General Requirements relating to transacting business under assumed names.
- f. Instructors shall notify the program manager of any change in mailing address within 30 days.
- g. Instructors shall notify the program manager of any failure to meet the instructor eligibility requirements of this code section within five days.
- h. Instructors teaching for more than one defensive driving school are certified to teach at all schools and need only submit one application.

19. Courts.

- a. A municipal, justice or juvenile court may offer eligible persons the option to attend any certified defensive driving school or a court may choose to contract with one or more certified primary providers for defensive driving school services. Courts that do not contract with a primary provider shall offer any eligible person the option to attend any certified school.
- b. A court shall not permit the use of any defensive driving school not certified by the Defensive Driving Program for dismissal or mitigation of a violation except that a court may permit eligible persons who are not residing in Arizona to attend a similar program in their home state. Defensive Driving Program certified schools shall coordinate all out-of-state attendances according to the provisions of this code section on behalf of Arizona courts.
- c. A court shall accept notification of a student's completion of a defensive driving class only from a certified defensive driving school.
- d. The presiding judge of the superior court for the county may require any or all justice courts in the county to select a primary provider or providers through a joint procurement.
- e. The presiding justice of the peace of the county shall have the authority for selection of one or more primary providers for justice courts in that county, subject to approval by the presiding judge of the superior court for the county. If there is no presiding justice of the peace for the county to effectuate the contract, the presiding judge of the county shall have direct approval authority for the contract.
- f. The presiding judge of the juvenile court shall have the authority for selection of one or more primary providers in each county, subject to approval of the presiding judge of the superior court of the county. If juvenile cases are assigned to a justice or municipal court, then the provisions of subsections (e) or (g) apply.

- g. The presiding magistrate of a municipal court shall have the authority for selection of one or more primary providers for that court, subject to approval of the presiding judge of the superior court for the county.
- h. The selection of a primary provider or providers shall adhere to applicable procurement codes and regulations including a competitive bid process.
- i. If a court or its administrative body selects one or more primary providers, the court shall have a written contract with each provider.
- j. The administrative director may require each contract include specific provisions.
- k. A court may choose to operate its own defensive driving school program for the purpose of civil traffic moving violation diversion.
  - (1) If a court chooses to operate its own defensive driving school program, it shall adhere to all applicable requirements and procedures in this code section.
  - (2) The court shall set a school fee that represents only the cost to operate the school.
- l. No court officer or employee, voluntary or paid, may own, operate, be employed by, or receive compensation from a defensive driving school except in cases where the court operates a certified defensive driving school.
- m. No court officer or employee may accept compensation or incentives, either directly or indirectly, to enroll students in a school or for selection of a specific school as a primary provider.
- n. A court shall promptly report any violations of this code section to the Defensive Driving Program.
- o. The presiding judge of each court may establish a diversion fee for each individual attending a defensive driving school, in accordance with A.R.S. §28-3396.
  - (1) The presiding judge may waive collection of the diversion fee.
  - (2) The presiding judge may change the diversion fee up to two times each year, effective either on January 1 or July 1, or both dates. A court shall notify the program manager 30 days prior to the effective date of the change, using the Defensive Driving Program form designated for this purpose.
  - (3) If a court sets a diversion fee, it shall set a single diversion fee amount for all instances under which all defendants may attend a defensive driving school as a court diversion program.

- (4) A court shall not assess both a fine and a diversion fee.
- p. If a court orders a person to attend defensive driving school, the court shall provide the person with a written court order which specifies the violation date, violation code, and any special conditions the person must fulfill.
  - (1) The court shall note on the court order if the person is fined for the violation. Where no fine is noted, the defensive driving school shall collect the court's diversion fee from the person attending the course.
  - (2) A court shall not order an ineligible student to attend a defensive driving class for dismissal of a violation.
- q. A person who completes a defensive driving class for dismissal of a charge is ineligible for diversion of a charge on any traffic citation dated within 24 months after the date of the first charge.
- r. A court may require additional or different insurance coverages as it or its administrative body or procurement authority finds appropriate.
- s. Courts shall not permit defensive driving school personnel to perform judicial functions or functions for court staff, and shall not allow school personnel direct access to court records. Courts shall not allow school personnel other than read-only access to electronic court records. School personnel shall not have access to areas within the court not normally accessible to the public.

#### **E. Initial Certification.**

- 1. Applicant Schools.
  - a. Any person or business entity meeting the qualification requirements of this code section shall submit the following requirements to initiate the certification process.
    - (1) The applicant shall file a completed and notarized application and all required supporting documentation with the program manager using forms supplied by the Defensive Driving Program. The administrative director may revise requirements, certification forms and fees at any time.
    - (2) The applicant shall remit the required certification fee with the application; certification fees are non-refundable.
  - b. Defensive Driving Program acceptance of an application package does not constitute a contract between the supreme court or its divisions and the applicant.

- c. An organization, its principals, or any individual applying for certification that previously has been denied certification or had certification suspended or revoked shall provide evidence that shows the reason for the previous denial or revocation is remedied.
  - d. The school certification process involves three steps. Each applicant shall complete each step before proceeding to the next step.
  - e. The program manager shall direct reviews of each of the steps by employees of, or contractors to, the Defensive Driving Program.
  - f. The program manager shall evaluate the applicant at the completion of each step, and make a decision to forward the application to the next step or reject the application. The program manager shall notify applicants in writing if rejected and the reasons for rejection.
  - g. When a school successfully completes a step, the program manager shall plan and schedule the next step, and notify the applicant.
  - h. Applicants completing all three required steps successfully are granted certification through the end of the current calendar year, in accordance with the requirements of this code section.
2. Step One (Certification Process). The purpose of Step One is to ensure compliance with the administrative requirements for a defensive driving school pursuant to this code section and applicable statutes, and provide for an initial review of the school's curriculum and related documentation.
- a. Each applicant shall accurately execute and submit a complete application package including:
    - (1) The notarized application form provided by the Defensive Driving Program;
    - (2) The Indemnification Statement and the Conflict of Interest Statement, signed by an officer with appropriate authority;
    - (3) Evidence of insurance;
    - (4) All other documentation and supplemental information required, including a detailed written description of the course curriculum in compliance with the course requirements set forth in subsection D(12).
    - (5) Detailed written operational and financial procedures that show understanding of and compliance with all program requirements; and
    - (6) At least one instructor certification application. A school shall not be certified, operate, nor retain certification, unless it has at least one certified instructor employed or contracted.
  - b. The program manager shall reject incomplete or inaccurate materials.

- c. On review of the application package, the program manager shall accept or reject the applicant based on completeness, accuracy, and demonstrated understanding of the Defensive Driving Program based on the materials submitted. The program manager shall require revisions as necessary.
  - d. The program manager may require applicants to answer questions in writing to determine their understanding of Defensive Driving Program requirements and procedures.
- 3. Step Two (Certification Process). The purpose of Step Two is to ensure compliance with all requirements for course and classroom as required by the code section, and particularly subsections D(12), D(13), D(14) and D(16).
  - a. The program manager shall set a time and location for a defensive driving course demonstration by the applicant. The applicant shall present the course in complete form with all elements and intended delivery formats as proposed by the applicant in the curriculum documentation. The program manager shall set ADM course demonstration requirements and processes in advance, in cases where the normal course demonstration process cannot reasonably be applied.
  - b. The applicant's chief instructor or equivalent shall present the course demonstration.
  - c. The school and presenting instructor shall demonstrate mastery and understanding of the course material. In the case of alternative formats, the written script and final course product shall match exactly, shall be wholly accurate, created specifically for the state of Arizona, with coverage of traffic law specific to Arizona.
  - d. Schools shall use only original materials, or those in the public domain. If the materials are not original, the school shall possess written authorization for their use.
  - e. The program manager shall prepare a written evaluation of the course demonstration including a description of each point of compliance with the standards for certification and any discrepancies or irregularities, and shall provide a copy of the evaluation to the applicant.
  - f. If the course demonstration does not meet requirements, the program manager may schedule a second course demonstration. Applicant schools shall conduct second course demonstrations only at the State Courts Building, 1501 W. Washington, Phoenix, Arizona.
  - g. The program manager shall deny certification to schools failing to present a satisfactory second course demonstration.

4. Step Three (Certification Process). The purpose of step three is to ensure the applicant's ability to use the Defensive Driving Program Tracking System and comply with the requirements of this code section for using the Defensive Driving Tracking System.
  - a. The applicant shall designate at least one individual for training on the interface requirements and operation of the Defensive Driving Tracking System.
  - b. The Defensive Driving Program shall conduct the training at a location chosen by the program manager.
  - c. Following the training, Defensive Driving Program staff will conduct a test or tests of the applicant's hardware and software to verify the applicant has the necessary equipment and expertise to operate in the Defensive Driving Tracking System. The applicant school shall demonstrate their hardware and software function correctly in connection with the Defensive Driving Tracking System, and that they possess the knowledge and training needed to conduct operations correctly.
5. Instructor Qualifications. Instructors shall obtain certification from the Defensive Driving Program prior to conducting classes or otherwise performing the duties of an instructor under this code section, except that an instructor in training may join with a certified instructor in the presentation of classes for a maximum of three months for training purposes. For certification, an applicant shall meet all the requirements of this code section, including:
  - a. An instructor shall have attained a minimum age of at least eighteen years old;
  - b. An instructor shall possess a high school diploma or a general equivalency diploma (GED);
  - c. An instructor shall hold a valid driver's license with no suspensions or revocations within the last five years;
  - d. An instructor shall have no felony convictions;
  - e. An instructor shall not have more than two civil traffic moving violations on their motor vehicle operator's record within the 39 months preceding application;
  - f. An instructor shall have no misdemeanor convictions involving moral turpitude or vehicle operations within the five years preceding certification;
  - g. An instructor shall disclose and describe all violations and convictions as described in this subsection. The program manager may require fingerprinting and a criminal history background check of instructors or applicants if permitted by statute; and

- h. Certified instructors applying for renewal of their certification are subject to the requirements for initial certification, except as otherwise noted in this code section.
- 6. Certification Process.
  - a. An instructor seeking certification shall complete and sign and have notarized the instructor application form and attach an original certified motor vehicle operator record. The program manager may waive or modify the motor vehicle operator record requirement for conversion or recertification applicants. Only official motor vehicle operator records issued by an official state agency are acceptable; in Arizona, only those issued by the Motor Vehicle Division of the Arizona Department of Transportation are acceptable.
  - b. The program manager, without waiving basic requirements for instructors, may grant an exception to the instructor certification requirements of this subsection on written request by a school. The program manager may grant an exception if:
    - (1) A new school, when applying for certification, requests a level one instructor permit for the instructor who teaches a successful demonstration class for school certification;
    - (2) A school submits a written request for extension of an instructor's certification expiration date because work, family, military responsibilities or other extenuating circumstances prevented the instructor from attending the required annual update training or teaching the required number of classes. The program manager shall not grant more than one consecutive extension, and each extension shall not exceed one year;
    - (3) A certified school which teaches a limited number of classes requests reduction of the minimum class requirement from six to four per instructor per year so the school can maintain a sufficient number of certified instructors to cover their scheduled classes should an emergency occur; or
    - (4) The program manager may, upon written request by the school, provisionally certify a school administrator or other person with level four experience as a certified instructor to teach Defensive Driving Program classes on an emergency basis only, by waiving further requirements for minimum classes taught and annual update training as required by this subsection.
  - c. Instructor certification levels (four) are established in order to track instructor training and experience. A level one instructor is a newly certified instructor who has complied with initial certification requirements. Levels two, three and four are obtained by completing the successive educational and experience requirements set by the Defensive Driving Program.
  - d. At the satisfactory completion of initial training, and after each succeeding training and experience requirement is completed, the instructor's school shall submit an application for the

instructor's certification or conversion with all required documentation, as specified by this subsection.

- e. The Defensive Driving Program reserves the right to develop an examination and require instructor applicants to pass the examination on initial certification application, and for each step in the conversion and renewal process.
- f. The instructor may apply for conversion of a permit to a higher level at any time during the period in which the instructor permit is valid by submitting an instructor certification application noting the conversion requested and providing acceptable documentation of compliance with the requirements for certification conversion to that level pursuant to this code section. To convert to the next higher instructor level, an instructor shall:
  - (1) Complete the application form provided by the program manager and attach an original and current 39 month motor vehicle operator's record if required by the program manager;
  - (2) Have taught a minimum of six classes for a certified driving school during the preceding twelve months. The employing school shall maintain records of each instructor's classes taught and provide verification on request; and
  - (3) Attend an in-service update training, or other training session provided by the Defensive Driving Program, or for level four instructors, a minimum of six hours of course work approved by the program manager and the employing or contracting school. The Defensive Driving Program provides training for this purpose [see subsection G(3)(d) and G(3)(e)]. The applicant shall provide documentation of the course completed on the form provided by the program manager and submit the form with the application.
- g. The program manager, upon receipt and approval of a completed application and supporting documentation demonstrating fulfillment of all requirements, shall issue the applicant a level one instructor permit which authorizes the instructor to begin teaching defensive driving courses as court diversion programs, or for a conversion application, the program manager shall issue certification at the next higher level for which the instructor is qualified.
- h. The school shall deliver instructor renewal applications at least 30 days prior to expiration. If a new application is not received by the program manager by the expiration date of the last instructor permit, the instructor's authorization to teach defensive driving classes expires and a new application shall be filed. The program manager may waive a repeat of training requirements in the event an instructor's certificate has expired without renewal, and renew the instructor's certification at the last attained level, unless more than twelve months has passed since lapse of certification.
- i. If an instructor's certification lapses or is refused due to failure to meet training requirements, the instructor is not eligible to apply for subsequent certification for 90 days.

- j. Instructor certifications are issued for twelve month periods based on calendar year (January through December).
- k. An instructor may exercise the privileges of certification only under the auspices of a certified defensive driving school.
- l. Level One.
  - (1) An applicant for level one certification shall observe and attend a certified defensive driving class as part of the instructor training program. The school shall certify the completion of this requirement on the form provided by the program manager for this purpose. The school shall retain the form with the applicant's records, and shall provide proof on request of the program manager.
  - (2) An applicant for level one certification shall complete a pre-service instructor seminar or other formal training program as determined by the defensive driving school. This seminar or training may consist of any defensive driving instructor course approved by the Defensive Driving Program. The applicant or school shall provide documentation of the course completed on the form provided by the Defensive Driving Program and submit the form with the applicant's application if requested to do so by the program manager.
  - (3) An applicant for level one certification shall successfully conduct at least one defensive driving class under the supervision of a defensive driving instructor who holds at least level two instructor certification. The supervising instructor shall complete an evaluation of the student instructor pursuant to this code section. The class shall comply with all requirements for Defensive Driving Program classes in this code section and the compliance shall be stated on the evaluation.
  - (4) An applicant for level one certification shall have passed an examination, if required, prior to certification.
- m. Level Two. To convert to level two, an instructor shall complete at least six hours of approved course work including the topics teaching adult students and the traffic laws of Arizona, shall have taught a minimum of six Defensive Driving Program classes as a certified instructor, pass any required examination, and have a record of compliance with all requirements of this code section. The applicant shall provide documentation of the courses completed and classes taught on the forms provided by the Defensive Driving Program for this purpose and submit the forms with the application.
- n. Level Three. To convert to level three, an instructor shall complete at least twelve hours of approved course work, shall have taught a minimum of twelve Defensive Driving Program classes as a certified instructor, pass any required examination, and have a record of compliance with all requirements of this code section. The applicant shall provide documentation of the courses completed and classes taught on the forms provided by the Defensive Driving Program for this purpose and submit the forms with the application.

- o. Level Four. To convert to level four, an instructor shall complete at least eighteen hours of approved course work, shall have taught a minimum of eighteen Defensive Driving Program classes as a certified instructor, pass any required examination, and have a record of compliance with all requirements of this code section. The applicant shall provide documentation of the courses completed and classes taught on the forms provided by the Defensive Driving Program for this purpose and submit the forms with the application.

## F. Denial of Certification.

- 1. Reasons for Denial. In addition to any reasons specified in Code Section 7-201: General Requirements, the administrative director may refuse to certify any applicant if the applicant:
  - a. Has not fully complied with any requirement contained in this code section or in Code Section 7-201: General Requirements;
  - b. Conducts business under a trade name which implies a course content other than the teaching of defensive driving;
  - c. Offers a premium, prize, food, lifestyle, entertainment or other inducement for selecting the school, other than the legal diversion or mitigation of a traffic citation; or
  - d. Fails to resolve a conflict of interest, as described in this subsection:
    - (1) Certification as, or operation of, a defensive driving school by a public agency or an employee of a public agency, which has within the regular scope of duties the power to cite individuals for minor moving violations, to influence the resolution of citations for minor traffic violations, or otherwise control, advise, solicit, or order the attendance, or potential attendance of individuals in a defensive driving school. This limitation on certification or operation of a defensive driving school by public agencies or employees of public agencies does not preclude law enforcement officers from acting solely as employed or contracted instructors for defensive driving schools;
    - (2) Certification as, or operation of, a defensive driving school by a public agency or an employee of a public agency which or who is in a position to derive a profit or fund their own activities from the use of its facilities or employees in the presentation of a defensive driving course;
    - (3) Employment by a certified defensive driving school, either for pay or as a volunteer, of any employee of a public agency who has within the regular scope of their duties the power or ability to control, advise, solicit, or order the attendance of individuals in a defensive driving school, or who is in a position to derive a profit or fund the public agency's activities from the use of the public agency's facilities and or employees to further the presentation of a defensive driving school's course;

- (4) Compensation of, or offering incentives to, a court employee, either directly or indirectly, to enroll students in a school or for selection of a specific school as a primary provider, except where the court operates a defensive driving school in compliance with this code section;
  - (5) Employment as a volunteer or paid employee, or compensation of any court officer or employee, to operate, instruct or provide any service to a defensive driving school, except in cases where the court operates the defensive driving school; or
  - (6) Any other apparent or actual conflict of interest as the administrative director defines.
- e. It is not a conflict of interest for a court to operate a defensive driving school program provided the court operating the school adheres to all applicable requirements of this code and sets a school fee, pursuant to A.R.S. §28-3397, that represents only the actual cost to operate the school. A court may not derive a profit from the school fee. Defensive driving schools operated by courts shall accept eligible defendants from other jurisdictions as provided in A.R.S. §28-3393(A)(2) and collect all state fees and court diversion fees and disburse them in accordance with procedures established by this code section.
2. Notification of Certification Denial. Reference ACJA §7-201: General Requirements.
  3. Eligibility for Application after Denial. Except as provided by Code Section (E)(6)(i), a certificate holder or applicant that is denied or revoked a certification under this code is not eligible for re-application for twelve months from the date of denial or revocation.
- G. Renewal of Certification.** Renewal of certification is subject to ACJA §7-201: General Requirements and the following additional requirements and exceptions.
1. Expiration Date. All certifications subject to the requirements of this code section expire after 11:59 p.m. on the last day of December in each calendar year, unless otherwise specified by the Defensive Driving Program.
  2. Schools. Each certified school seeking renewal of certification shall make a request in writing on the renewal application form provided by the Defensive Driving Program, supply supplemental information as required, and pay the specified renewal fee.
    - a. The program manager shall calculate the renewal fee based on the total number of students completing a course with that school during the most recently completed state fiscal year, according to the schedule set by the administrative director.
    - b. Each school shall deliver notarized renewal applications and fees to the Defensive Driving Program no later than November 30th of each year.
  3. Instructors.

- a. Certified instructors shall apply for renewal by submitting a notarized application provided by the program manager and if requested, attach an original and current 39 month motor vehicle record that includes the preceding twelve months. The program manager may waive the application requirement for continuing instructors if training and currency are current according to Defensive Driving Tracking System records, and if compliance with program requirements can be assured by a notarized affidavit of compliance.
  - b. Instructors seeking renewal shall have taught a minimum of six classes for a certified defensive driving school during the preceding twelve months. The employing school shall maintain records of classes taught for each employed or contracted instructor and shall provide them on request.
  - c. Instructors seeking renewal shall complete at least six hours of continuing education training each year in accordance with this code section, unless an extension is granted per subsection E(6)(b)(2).
  - d. Level four instructors shall attend an in-service update training or re-certification training approved by the Defensive Driving Program and the certified defensive driving school that employs the instructor. The instructor may obtain this training outside of supreme court training programs, except as required by subsection G(3)(e) unless waived. The school shall provide documentation of the course completed on the forms provided by the Defensive Driving Program for this purpose and submit the form with the instructor's application.
  - e. Once each three year period, a level four instructor shall attend an in-service update training program that is conducted by the Defensive Driving Program.
4. Denial of Renewal. All circumstances that may result in denial, suspension, or revocation of certification in subsection F are also cause for denial of renewal of any certificate; in addition, reference ACJA §7-201: General Requirements.

## **H. Complaint, Investigation & Disciplinary Action.**

1. General Procedures. Reference ACJA §7-201: General Requirements.
2. Sanctions. In addition to the sanctions specified by ACJA §7-201: General Requirements, the administrative director may do either of the following or both:
  - a. Cause forfeit of any surety or cash bond; and
  - b. Place a certificate holder on probation because of failure to meet the requirements of this code section or of ACJA §7-201: General Requirements. Probation lasts no longer than twelve months, after which the administrative director may allow the holder of a valid certificate to continue to exercise the privileges of the certificate without condition, decertify the school or

instructor if corrective action has not brought the certificate holder into compliance with the requirements of this code section, or renew the certificate upon its expiration under continued probationary conditions.